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Brief of Bacon for Respondent

Supreme Court of the United States.

Filed Mar. 5, 1901.

OCTOBER TERM, 1900.

KNIGHT TEMPLARS & MASONS LIFE INDEMNITY COMPANY,

Petitioner,

vs.

ROSA B. JARMAN,

Respondent.

No. 370

Brief and Argument of Respondent in Opposition to Petitioner's Motion for Writ of Certiorari and Argument in Support Thereof.

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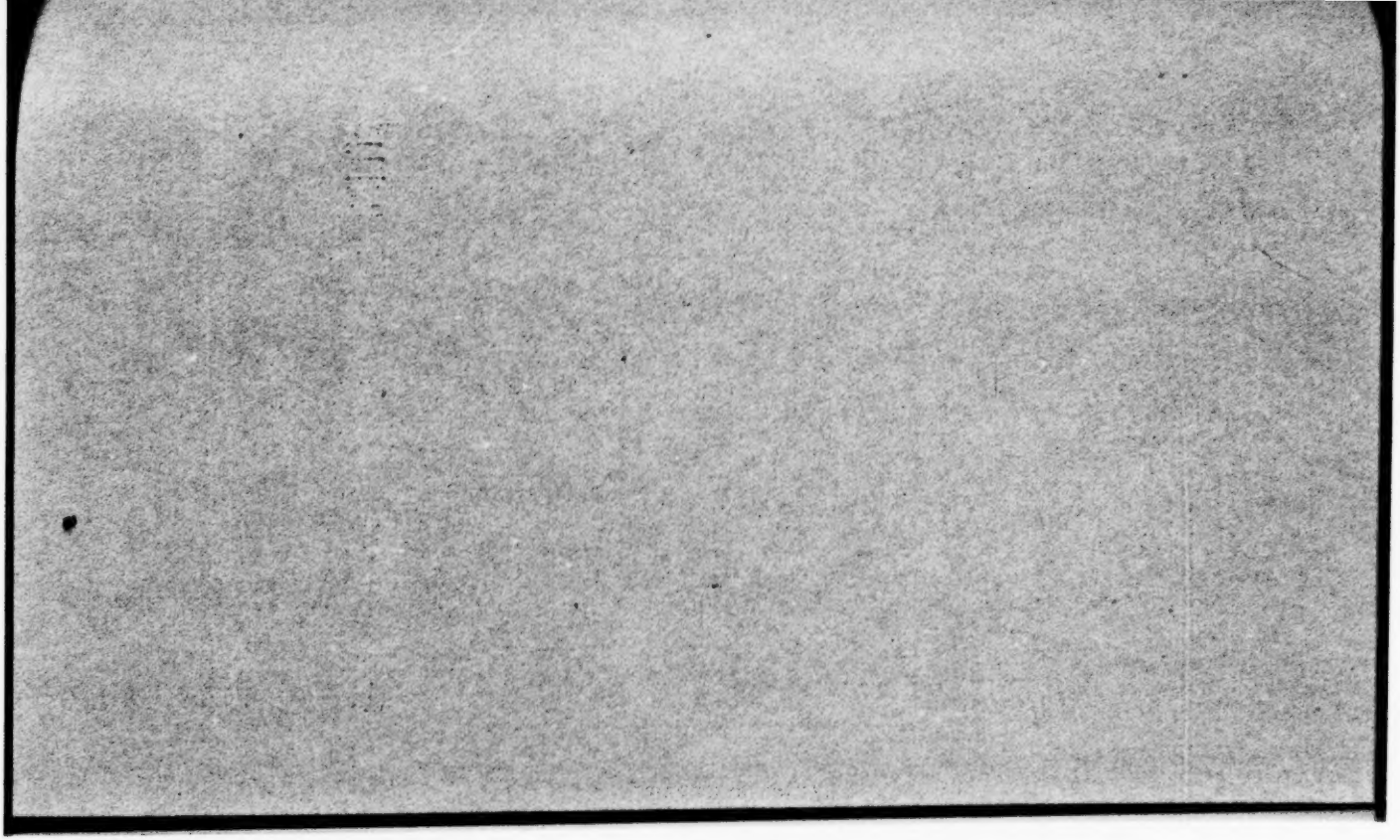

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

KNIGHT TEMPLARS & MASONS LIFE INDEMNITY COMPANY, PETITIONER,

vs.

ROSA B. JARMAN, RESPONDENT.

Brief and Argument of Respondent in Opposition to Petitioner's Motion for Writ of Certiorari and Argument in Support Thereof.

MAY IT PLEASE THE COURT:

The respondent above named, Rosa B. Jarman, believing that there is no merit in the contention of the above named petitioner, Knight Templars and Masons Life Indemnity Company, that error has been committed by the United States Circuit Court of Appeals for the Eighth Circuit, and that no valid

reason exists either in law or in equity why the writ of certiorari prayed for should be awarded, now comes and submits for the consideration of this Honorable Court authorities and reasons in opposition to the petitioner's motion for a writ of certiorari and the printed argument in support thereof.

We propose to follow in our discussion the general outline adopted by counsel for petitioner in their brief and argument, and will consider the questions of law involved in this case in the same order. The facts sufficiently appear from petitioner's statement and brief.

I.

The so-called suicide statute of Missouri entered into and formed a part of the contract between petitioner and respondent; this law was never repealed, although the subsequent law of 1887 seemed to exempt the company from the operation of such statute as far as subsequent contracts were concerned. This exemption, however, was afterwards repealed by a valid act of the legislature of the State of Missouri in 1897. Under the agreed statement of facts and the law petitioner was precluded from its defense of suicide.

1. The statute of the State of Missouri given on page 5 of petitioner's brief, formed a part of the contract between petitioner and respondent, and under it the so called suicide clause in the policy sued on was itself void.

It is unnecessary to state that, inasmuch as what is now known as assessment insurance, was not recognized by the laws of Missouri prior to 1887, the defendant company prior to 1887 was, in the eyes of the law, the same as any other life insurance company. It has been so adjudicated in

> Knight Templars' & Masons' Life Indemnity Co. v. Berry, 50 Fed. Rep. 511; 1 C. C. A. 56.

The policy sued on was issued before 1887.

In support of the contention that the statute in question formed a part of the policy, making the provision therein contained, that it should be void in case of suicide, itself absolutely void, we cite the following authorities: —

In the case of Equitable Life Assurance Co. v. Clements, 140 U. S. 226, this court says: —

> "The statute is not directory only, or subject to be set aside by the company with the consent of the assured, but is mandatory and controls the nature and terms of the contract into which the company induces the assured to enter."

The Supreme Court of Missouri has held that the statute in question formed a part of the policy just as much as if written out in full in it.

In the case of Havens v. Ins. Co., 123 Mo. 403–417, it is said: —

> "The statute enters into and forms a part of the contract of insurance as completely as if written into it."

In Cravens v. New York Life Ins. Co., 148 Mo. 583–604, the court said:—

> "Being a Missouri contract the statute then in force, with respect to the subject-matter of the contract, entered into and became a part thereof as much so as if copied therein."

In the case of

White v. Ins. Co., 4th Dillon, 177,

Judge Dillon, speaking of certain provisions in life insurance policies, issued in this State after the enactment of Section 5849 Revised Statutes, 1889, said: —

> "The Legislature of Missouri conceived, and we think wisely, that the promises held forth to the assured in the policies in general use were too often a delusion and a snare, and as the courts were powerless to correct the evil, it ought to be corrected by statute. * * * We are of opinion that policies issued and delivered in Missouri, after that act took effect, fall within its protective operation; and as to such policies the act is to be treated as if incorporated therein. * * * The general rule is that laws in existence are necessarily referred to in all contracts made under such laws, and that no contract can change the law."

Many other cases affirm this doctrine, from which a few only are cited: —

Christian v. Ins. Co., 143 Mo. 460–465;
Wolff v. Burning, 74 Mo. 87;

Reed v. Painter, 129 Mo. 674;
Horton v. New York Life Ins. Co., 151 Mo. 604.

Doubtless, if this petitioner corporation had been only doing business in the State of Missouri, the so-called suicide clause would have been omitted from its policies, but, because in most of the States there is no prohibition of the defense of suicide, and it was desirable to use a uniform policy, the policies issued in the State of Missouri contained conditions avoiding them in the case of suicide, although such a condition in the policy was made void by the statute, and the parties will be presumed to have so understood the contract at the time they entered into it.

2. Counsel for petitioner are in error when they assume that the suicide statute of Missouri was ever repealed by the legislature. It is true that in 1887 the legislature of Missouri passed an act under the terms of which it has been held, especially in the case cited by petitioner, of Haynie v. Indemnity Company, 139 Mo. 416, that from the date of its adoption the proviso did exempt assessment companies from the operation of the suicide statute.

In this connection we desire to refer to the recent case of

Aloe v. Fidelity Mutual Life Assn., 55 S. W. R., at page 993.

The Supreme Court of Missouri is composed of two divisions, and whenever an opinion

is rendered in either division to which one of the judges of that division dissents, and under certain other contingencies, the case may be transferred to the court in banc where both divisions meet as one court and reconsider the case. In the Aloe case an opinion was rendered by a majority of the judges in one of the divisions overruling the Haynie case, and certain other cases referred to in the opinion, by which that court had held that assessment life insurance companies were exempt from the provisions of the statute of Missouri relating to the defenses of suicide and misrepresentation. A majority of the court were in favor of less radical action and therefore disagreed with the division opinion, and allowed the cases in question to stand although questioned. This is an acknowledgment which has weight here.

(a) If the suicide statute entered into and formed a part of the contract sued on, the subsequent adoption of the law of 1887, under which assessment companies were exempt from the operation of certain sections of the insurance laws, did not affect the policy in question, because such law had no retrospective effect and did not in any way impair or repeal the statute, but simply created an exemption as to future contracts.

The constitution of Missouri provides, section 15, article 1, that no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, can be passed by the General Assem-

bly. Hence, the law of 1887 only operated prospectively and on future contracts.

In the case of

Hope Mutual Life Ins. Co. v. Flynn, 38 Mo. 483,

the court, citing Sedgwick on Construction of Statutes, Sec. 188, said: —

> "A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed, is to be deemed retrospective or retroactive."

This court in the case of

City Railway Company v. Citizens Railway Company, 166 U. S. 557,

has said: —

> "But it (the act of the legislature), certainly should not be construed to act retrospectively or to affect contracts entered into prior to its passage unless its language is so clear as to admit of no other construction."

This was said in a case where there was no constitutional prohibition by the State constitution of retrospective laws; much more is it true when, under the constitution of the State of Missouri, the legis-

lature had no power to apply the statute to contracts already in force.

Bearing directly on this question is the case of

Voight v. Kersten, 164 Ill. 344; 45 N. E. R. 543,

where the court says: —

"It would seem that the construction of the act passed in June, 1893, giving it the effect to destroy that right of appointing a beneficiary, or naming another beneficiary, which existed in favor of the deceased under his contract prior to the passage of the act, would be to give the act a retrospective effect, and destroy the obligation of the contract entered into between the deceased and the complainant. It is a recognized rule in the construction of statutes that they should be so construed as to give them a prospective operation only, and they should be allowed to operate retrospectively only where the legislative intention to give them such operation is clear and undoubted."

See also Moore v. Chicago, &c., Society (Ill.). 52 N. E. R. 818.

The Supreme Court of Missouri says: —

Barton Co. v. Walser, 47 Mo. 189–201.

"As between individuals the Legislature has no power to interfere and declare an act or deed valid which was previously void. Therefore, when the Legislature undertook by an enactment to declare a deed

> legal and binding which was made by an insane person, it was decided by this court that the act was unconstitutional and of no effect. **Routsang v. Wolf, 35 Mo. 174.**"

(b) It is, however, contended that under the decision of this court in

Ewell v. Daggs, 108 U. S. 142,

the suicide statute applies only to the remedy, and is not a part of the contract. We answer this by two suggestions: If the suicide statute in question formed a part of the contract, then certainly it did not relate to the remedy. And, again, as the opinion of the court below well says:—

> "In Ewell *v.* Daggs a purely statutory defense existing under the usury laws of a State when a certain contract for the loan of money was entered into, was taken away by a subsequent constitutional amendment, and it was held in substance that such repeal did not impair the obligation of the contract. The court in that case regarded the usury law that had been repealed as in the nature of a penal statute inflicting a penalty upon the lender which any subsequent legislature could repeal and thereby remit the penalty."

The defense of suicide in this case is made under the terms of a clause of the contract, which, if void under the statute at the time it was made, was void for all time, and could not be revived or given life, even if the suicide statute was in fact afterwards repealed, which it was not.

3. We pass now to the effect of the law of 1897, repealing the exemption which had previously existed in favor of assessment companies, and because of which petitioner withdrew from doing business in the State. We think that this law has an important bearing on this case, both for the reason that, if valid, it repeals the exemption and makes the contention of petitioner of no value, and, on the other hand, if the law was not valid it must be taken to be an expression of legislative intention.

(a) It is urged that the act of 1897 is unconstitutional because it does not conform to the requirement of the constitution of Missouri that "No bill * * * shall contain more than one subject, which shall be clearly expressed in its title."

The object of this provision is to prevent "log-rolling," and surprise and fraud on members. State v. Miller, 45 Mo. 495–498.

> "The courts in all the States where a like or similar provision exists, have given it a very liberal interpretation, and have endeavored to construe it so as not to limit or cripple legislative enactments any further than what was necessary by the absolute requirements of the law. * * * It is sufficient that the title fairly embraces the subject-matter covered by the acts; mere matters of detail need not be stated in the title." State ex rel. Wolf v. Bronson, 115 Mo. 271, 276.
>
> "A mere reference to the section to be amended, without other description of the subject-matter of the amendatory law, is, under the ruling of this court, a sufficient title to an act which deals exclusively with

the subject of the section amended." State ex rel. v. Heege, 135 Mo. 112, 118.

The application of the last preceding rule is decisive of the question raised here.

In the statement of the title of session acts 1897, 129, we find the following, *inter alia*, "An Act to repeal Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, entitled, etc."

Upon analysis it is disclosed that R. S. 1889, section 5869, deals with four, and only four, sub-topics relating to the law of insurance. What are they?

First, annual statement.

Second, visitation and examination by superintendent of insurance.

Third, a statement of the law to which "such foreign companies" are subject and required to conform.

Fourth, a provision in regard to the relation of such companies to the general insurance laws of the State.

By no course of reasoning can we arrive at the conclusion that the amendatory section deals with any other than these four subjects. True, the amendatory section in making the statement of the law to which foreign companies are subject and required to conform, does not refer to the section of the statute to which the old section refers, and it refers to other sections, but, as we have already seen,

" mere matters of detail need not be stated in the title."

State ex rel. v. Bronson, 115 Mo. 271, 276.

The only difference between the old section and the amendatory act, is in regard to the law which " such foreign companies " are subject.

It will be readily seen that if the title must so minutely enter into details as to enumerate these differences, the declaratory clause of a statute would be only a repetition of the title. Since the amendatory act ('97–129) deals exclusively with the subject of the section amended, and makes specific reference to the section amended, the subject of the amendatory act is clearly expressed in its title.

> " The practice of legislation by reference to sections of the authorized version of the statutes (without other description of the subject of the amending act) has been followed quite generally in this State on the faith of early rulings of the Supreme Court approving such methods of law making. So much has been done, and so many rights have been acquired, on the basis of those rulings, that we hold that the question of their correctness ought not to be re-opened at this day. We adhere to them and follow them as an expression of the settled law of Missouri."

The State ex rel. v. County Court, 128 Mo. 440.

(b) In the case of Toomey v. Supreme Lodge Knights of Pythias, 147 Mo. 129–137, the Supreme

Court of Missouri sitting in banc, by an unanimous opinion, referring to the section of the statute in question and also to the law of 1897, said: —

> "As to the first class, regular or old line (companies), Section 5855, Art. 2, Chap. 89, R. S. 1889, provided: 'In all suits upon policies of insurance on life hereafter issued by any company doing business in this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void.'
>
> This provision, it has been held, applies only to the first class above specified and does not apply to the second class, assessment companies (Haynie *v.* Knight Templars & Masons' Life Indemnity Co., 139 Mo. 416) because they are organized under Art. 3, Chap. 89, R. S. 1889, and it does not apply to the third class fraternal-beneficial associations — because by section 2823, Art. 10, Chap. 42, R. S. 1889, it is provided that, 'such fraternal beneficial societies shall not in any way be subject to the insurance laws of the State.'
>
> Whether this discrepancy was designed, or was an oversight by the General Assembly, it is not the province of the courts to say, but it appears it was a mistake, *for in 1897, the legislature extended the law to all classes of insurance* (Acts. 1897, p. 129).

4. It is contended by the petitioner that the so-called suicide statute is not applicable to this case, where a man takes his own life while insane, because

the words "commit suicide," as used in the statute, apply only to a felonious suicide.

In considering this question we respectfully claim that the suicide statute must be liberally and not strictly construed, because it was intended to be remedial in its effect.

(a) Undoubtedly in construing the law the intent of the lawmakers must be considered. It is a part of legal history that insurance companies in order to restrict and limit their liability, among numerous other conditions and exemptions, stipulated that they should not be liable where the person insured committed suicide. In passing upon this defense the courts, beginning with the case of

Breasted v. Farmers &c. Co., 4th Hill, 73–75, which was afterwards cited and approved by this court in the case of Manhattan Life Ins. Co. v. Broughton, 109 U. S. 121, held that a man could not commit suicide if insane, the act of suicide being predicated on an intent. As the court said in the latter case:—

> "If a man's reason is so clouded or disturbed by insanity as to prevent his understanding the real nature of his act, as regards either its physical consequences or its moral aspect, the case appears to us to come within the forceful words uttered by the late Mr. Justice Nelson, when Chief Justice of New York, in the earliest American case upon the subject: 'Speaking legally also (and the policy should be subjected to this test) self-destruction by a fellow-being bereft of reason can with no more propriety be ascribed to his own hand than to the deadly instrument that may have

been used for the purpose, and whether it was by drowning, poisoning or hanging, or in any other manner, was no more his act in the sense of the law, than if he had been impelled by irresistible physical power.' Breasted *v.* Farmers &c. Co., 4 Hill, 73–75.''

Then the insurance companies, to avoid the effect of these decisions, inserted in their policies the words, "suicide, sane or insane, voluntary or involuntary." This clause was held to be effectual and to relieve the companies in all cases of suicide, although this court has pointed out a possible case in which such a clause would be held of no effect.

In the case of Bigelow v. Insurance Co., 93 U. S. 284, the court cited with approval the case of Pierce v. Travelers Ins. Co., 34 Wis. 389, in which, in a case where the words of the policy provided that it should be void if the insured "should die by suicide, felonious or otherwise, sane or insane," the court there said: —

"The condition here relieves the company from liability only when the self-destruction was intentional, or committed by a party who was conscious of the nature of the act he was committing, or about to commit, and conscious of its direct and immediate consequences, though the act may have been unaccompanied by any criminal or felonious intent or purpose. *It does not apply or relieve the company, where the death of the assured was accidental, or may be properly be said to have been caused by accident, though brought about, it may be, by his own hands, or by some dangerous or destructive instrument held in them.*"

(b) Courts have very frequently commented on the

absurd, and self-contradictory expression "suicide, sane or insane, voluntary or involuntary," although the Supreme Court of Missouri in the case of Haynie v. Indemnity Co., 139 Mo. 416, says that the words will be construed in their popular sense as referring to any act of self-destruction.

If the words of an insurance policy are to be strictly construed against the insurer as has been the settled law for nearly one hundred years, it is time that this clause in insurance policies should be held to be meaningless and of no effect.

(c) In the foregoing remarks we have used the expression, "suicide," although the words in the policy are "self-destruction." We may take it for granted that it will be conceded that all such words as, "self-destruction," or "take his own life," or "commit suicide," or anything of that kind are synonymous.

As this court has well said in the case of Conn. Life Ins. Co. v. Akens, 150 U. S. 468-475: —

> "It was argued that the word 'self-destruction' as here used was more comprehensive than suicide, and included an intentional, though insane killing of oneself. But the two words are treated as synonymous in the very clause in question as well as in the former opinions of this court. The act whether described by words of Saxon or Latin origin, or partly of the one and partly of the other, 'dying by his own hand,' 'self-killing,' 'self-slaughter,' 'suicide,' 'self-destruction,' without more cannot be imputed to a man who, by reason of insanity (as is commonly said) 'is not himself.'"

(d) The meaning of the suicide statute might be aptly expressed if it read as follows: "The defense of suicide in this State, as to policies hereafter issued, shall not be permitted, unless the insured intended at the time the policy was issued to take his own life, and any stipulation in the policy to the contrary shall be void."

In the first case decided after this statute went into effect,

Keller v. Travelers Ins, Co., 58 Mo. App. 557, the court said: —

> "The plain purpose of the statute *supra* was to prevent the insertion in policies of life insurance of exceptions to liability on the ground of the suicide of the insured, unless it could be proven 'that the insured contemplated suicide at the time he made the application for the policy.' This was in effect a legislative declaration of the public policy of this State. That it was intended to limit the power to contract for a lesser liability in cases of death by suicide, not within the limitation expressed in the statute, is also apparent from its terms, to wit: 'and any stipulation to the contrary shall be void.'"

And the Supreme Court of Missouri refers to the statute as meaning what we have said. In the case of,

McDonald v. Life Assn., 154 Mo. 627,

the court said: —

> "Measured by these rules this company, so far as the face of the contract shows, is not an assessment

company, and hence Sec. 5855, Revised Statutes 1889, applies, and as the defendant has not attempted to show, as that section requires, when the defense of suicide is interposed, that the insured contemptated suicide when he applied for insurance, there has been no valid defense pleaded."

And again the court says: —

(1898) Logan v. Fidelity &c. Co., 146 Mo. 114-123.

"This section was not designed to limit the persons of a particular class of companies, as such by name, but its terms established a general rule, applicable to any company whose contracts insure against death, and which attempts to avoid liability in case of suicide, except those companies doing business on the assessment plan that were expressly exempted by reason of the provisions of section 5869, Revised Statutes 1889, of the Act authorizing such companies to be organized and prosecute business in this State, and the force of that provision in favor of the assessment companies has been stricken down by an act of the legislature in 1897, so that the *defense of suicide* is now alike unavailing, etc. * * * If one holds *a general life policy* and an accident policy and is killed by lightning or *commits suicide*, so that he may be said to have died by accidental means, both the companies should pay and the stipulation against liability in the *event of suicide* in the policies should be no more a defense, etc."

In this connection we may well refer to the words of Judge Campbell in the case of

John Hancock Ins. Co. v. Moore, 34 Mich. 42, where he says: —

"Some stress is laid on the term suicide as if it means a wrongful act or self-murder. It has no such restricted meaning. It means self-killing just as homicide means killing any one else. But there may be excusable homicide as well as felonious, and suicide was only cognizable at law when the person was *felo de se* or guilty of a felonious act. If *non compos mentis*, the actor in homicide, or suicide, commits no crime. * * * A construction which punishes a person who is not in fault is not to be favored if it can be allowed at all. The very object of life insurance is to provide for death by disease or in the ordinary course of nature. Death by his own hands or in the case of one not *compos* is as much the result of disease as death by fever or consumption. The act of an insane man is morally no more his act than if it were mechanical."

The legislature must be presumed to have had in view the condition of affairs at the time the statute was enacted and to have intended the statute to make void the condition of the policies of life insurance companies providing that such policies should be void in case the insured took his own life "sane or insane, voluntary or involuntary."

(e) That this construction is right and that it is also true that in the popular sense any act by which a person takes his own life is loosely referred to as "committing suicide," is shown, not only by the personal experience of every man, but it appears also that it was so used even by counsel in this case. Throughout the brief presented by petitioner to the

court on the trial of this case in the lower court, they referred to the act of Jarman as his "committing suicide."

Thus on page 3 of the brief in the trial court, the substance of the seventh paragraph of the agreed statement of facts, is stated as follows: "John P. Jarman *committed suicide* on September 12th, 1898, while he was insane."

On page 5 of the same brief counsel says: "The contract of membership between John P. Jarman and the defendant company provided that in case of his *self-destruction or suicide*," the defendant would pay only the assessment, etc.

And on page 6 of the same brief counsel says, in stating the points involved in the case: —

> "Within the past five years the defendant company has had two cases litigated in Missouri upon policies *where the members committed suicide*. Both policies were issued after the passage of the assessment law of Missouri noted above. It was held that the proviso in section 5869 relieved the defendant company from the operation of section 5855 referring to suicide. This was in effect deciding that as to assessment companies section 5855 was repealed by the law of 1887. The question arises in this case, did such repeal relieve the defendant company from section 5855, referring to suicide, committed by a member whose policy was issued prior to the passage of the law of 1887? The contention of the defendant company is that after assessment companies were relieved of the operation of section 5855 by the law of 1887, which provided that such companies should not be subject to any provisions of the general insurance

laws, except section 6013, referring to service of process, section 5855, being merely a declaration of the public policy of Missouri with reference to suicide, could not be invoked in any suit upon the policy of a member *who committed suicide* after this time and consequently, that the condition against suicide will defeat any recovery by the plaintiff, except the amount agreed to be paid in case of suicide, viz.: the amount paid in assessments by the member.

"If the contention of the defendant on the first point of law is maintained, the whole controversy will be settled, and the defendant will pay to the plaintiff all the money paid in assessments by the member; on the other hand, if it is held by the court that, as a matter of law, the *defense of suicide* cannot be pleaded by the defendant, the question arises whether or not the beneficiary is entitled to recover with the face of the policy either all the money paid upon the policy in "assessments" or all the money paid upon the policy in assessments during the first five years; in other words, whether or not the certificate, the constitution or by-laws, and the application, constituting the contract in question, are affected by the changes which have been made in the constitution."

On page 19 of the same brief counsel say: "In the Berry case (referring to the case, Knight Templars, etc., v. Berry, 50 Fed. Rep. 511), the suit was brought on a policy issued in 1885 by the same company to another resident of Trenton, Missouri, who also *committed suicide*."

The policy itself refers to "suicide" as equivalent to self-destruction, sane or insane, etc.

(f) Any other construction of the statute would make the same unmeaning. It has always been the law that the suicide of a sane person avoids the policy whether so stipulated therein or not.

Ritter v. Mutual Life Ins. Co., 169 U. S. 139.

And it is a reflection on the intelligence of the legislature to hold that they intended to provide that it should be no defense, in an action on an insurance contract, that the insured, when sane, intentionally and knowingly took his own life, but that it should be a valid defense, if he took his own life while insane. It is evident that the words "commit suicide" are not used in their strict legal sense, but rather in a broad and general popular sense.

(g) The wording of the agreed statement of facts is that Jarman, "while insane to such an extent as to be *incapable of understanding the nature or consequences of his act*, took his own life and came to his death on the 12th day of September, 1898, by a gunshot wound inflicted by himself."

Under the legal construction of the word suicide there can be no such thing in law as "*insane*" or "*involuntary*" suicide. It is a contradiction in terms.

Haynie v. Knight Templars, 139 Mo. 416.

We might as well talk of involuntary theft or murder. If a somnambulist should, while asleep,

shoot a man, it would not be homicide; if, while dreaming, he should shoot and kill himself, would that be *involuntary* suicide? If a typhoid fever patient while delirious should leap out of a window to escape an imaginary enemy would that act under the stipulation in this policy be involuntary suicide? Yet in this case it is agreed that Jarman did just such an act.

The wording of the policy is not such that the death of Jarman comes within the exception, for it is admitted that Jarman did not know what he was doing, or what would be the effect of his act.

It follows therefore as to Jarman's act that it is admitted that: —

He didn't know that the article he had was a gun.

Nor that it could be discharged.

Nor that if discharged it would probably injure or kill him.

He did not know that he could discharge it, nor that he did discharge it.

Nor did he comprehend in any degree what he was doing.

This was not a voluntary act, even of an insane man, nor is it anything more than a natural death from infirmity or disease.

It is the same as if Jarman touched a live electric wire, not knowing what it was, and was killed, or as if, in a perfect darkness concealing everything, he leaned against the railing of a high bridge and it gave way and he was precipitated to the rocks below and was killed.

II.

We earnestly contend, however, that the suicide statute, the Act of 1887 and the Act of 1897 are wholly irrelevant under the agreed facts in this case. It is true that in their original brief counsel for petitioner construed the 7th paragraph of the agreed statement of facts (Rec., p. 6) to mean, as they tersely state, that "John P. Jarman *committed suicide* on September 12, 1898, while he was insane." But afterwards, in the light of further reflection, petitioner concluded that such an opinion was too hasty and so contended in the United States Circuit Court of Appeals that Jarman did not legally "commit suicide" within the meaning of the Missouri statute, but took his own life, or committed suicide, while insane. If, however, Jarman died by accident or disease then all the preceding discussion is irrelevant.

The language of the seventh paragraph of the agreed statement of facts is contradictory. It seems to have been a case where the parties, in order to apparently agree, made an ambiguous and contradictory statement, which may be construed in several different ways. The counsel who prepared the case on the part of petitioner, knowing that the first sentence of the seventh paragraph would effectually eliminate the question of suicide from the case, insisted upon the second clause, "It is not contended, however, by plaintiff that said self-destruction was the result of accident." Now if Jarman, "while insane

to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life, and came to his death by a gunshot wound inflicted by himself" he certainly did not take his own life with even the intent of an insane man, nor was it either a voluntary or involuntary act. It was no more a case of self-destruction than would be that of a child who exposes himself to the inclemency of the weather, catches cold and dies of pneumonia.

We have already urged upon the attention of the court some considerations as to the meaning of this seventh paragraph. We believe that, under a fair construction of that stipulation, if Jarman was incapable of understanding the nature or consequence of his act and so took his own life, it is just the same as if a man, while incapable of understanding the nature of an electric wire or the consequences of touching it, should come to his death by contact with such wire, in which case it certainly could not be said that he committed suicide. The argument of petitioner is certainly, so far as concerns the construction of the words, *commit suicide*, logical; it suggests the subtle distinctions of the metaphysicians and logicians of mediaeval times, but, if that line of discussion is to be adopted and carried to its fullest extent, then when the words of the seventh paragraph are analyzed they cannot mean that Jarman *committed suicide* in the technical meaning of the words, because, as counsel for petitioner urge, he was insane. Nor did he commit suicide while insane, because such a thing is impossible, and he

had not even the intention of an insane person. Therefore Jarman's death was due to accident.

Although it is said in this stipulation that it is not contended that Jarman died from accident, in view of the first sentence of the stipulation it must be conceded that Jarman's death was, when viewed in the light of the decisions of the courts, either an accident or else it was the result of disease.

It often occurs that a man in public or business life overworks and keeps late hours, so that, to use a popular expression, he burns the candle at both ends, and finally dies of nervous prostration or Bright's disease as the direct result of his own imprudence. Now, in such a case, it might with equal propriety be urged by the insurance companies that such a man committed suicide involuntarily, yet no court would sustain such a contention.

III.

It is urged, however, that the amount of respondent's recovery is too large and should have been limited to the $5,000 without regard to the amount of assessments paid. In other words, it is contended that the company had the right to, and did, amend its laws so as to reduce the amount of the policy and eliminate the part of the contract which provides for the return of the assessments paid.

1. In the first place we claim that the amendments of the laws had no retrospective effect nor were

they intended to have that effect, nor do they apply to existing contracts.

The policy is found on page 14 of the transcript, where the promise is to pay "the sum of $5,000 and all the money paid on the policy in assessments subject to the limitation as to the amount of such payment as is provided in Sec. 1 of Art. 7 of the constitution on the back of this policy."

Sec. 1 of Art. 7 simply provides (Rec., p. 29) :—

> "Sec. 1. Upon due notice and satisfactory proof of the death of a member of this company the board of directors shall within sixty days pay the widow, children or heirs of the deceased member (in the order named unless otherwise ordered by the member during his lifetime, or in his will) the amount set forth in the deceased member's policy of membership.
>
> Provided that a policy of membership for $5,000 shall be good for all the money in the death fund arising from one assessment, provided it shall not exceed $5,000, and all the money paid on the policy in assessments. And a certificate for $4,000 shall be good for four-fifths of all the money in the death fund arising from one assessment, provided it shall not exceed $4,000 and all the money paid on the policy in assessments; and so on in the same proportion as to all certificates."

The last amendment of February 20th, 1894, was by striking out all of the proviso.

This then left the law as amended to only consist of the first paragraph, that upon due notice and proofs of death the company should pay the bene-

ficiaries in the policy "the amount set forth in the deceased member's policy of membership."

Certainly there is nothing here to indicate in the least any intent on the part of the company to affect the policy. The direction is that the directors shall pay to the insured the amount specified in the policy, and it was and is agreed under section 1 of art. 4 of the constitution (Rec., p. 24), that the policy

> "Shall constitute the basis of settlement with the beneficiaries."

We contend, therefore, that under the provisions of the constitution and the by-laws themselves, both as originally existing and also as amended (for it must be admitted that the contract is to be strictly construed against the company) the policy as issued must fix the amount to be paid.

It is only necessary upon this point to cite a few authorities.

In the case of

> Carnes v. Iowa Traveling Men's Association (Iowa), 76 N. W. R. 683,

the court said: —

> "Nothing in it (the constitution) authorized the association to amend, and thereby bind a member to any change in the contract without his assent, nor do the amended articles purport to change existing contracts or to authorize any such change by the adoption of by-laws. In the absence of such provisions, the

articles and by-laws as amended cannot be treated as retrospective in their operation. Mere silence as to the effect of revision and amendment of the constitution and by-laws will not warrant the inference that any change wrought will limit or extend the obligation heretofore created by the issuance of certificates of membership. Statutes are construed so as to give them a prospective operation, unless the intention that they operate retrospectively is clear and undoubted, and it is not perceived why the same canon of construction should not be applied to the rules adopted by a mutual insurance association for the transaction of its business and the government of its members."

The same principle is laid down in

Spencer v. Grand Lodge, 65 N. Y. Supp. 1146; affirming 48 N. Y. Supp. 590;
Grand Lodge, etc. v. Stumpf (Tex.), 58 S. W. R. 840;
Hobbs v. Association, 82 Iowa, 107; 47 N. W. 983;
Sieverts v. Association, 95 Iowa, 710; 64 N. W. 671;
Benton v. Brotherhood (Ill.), 34 N. E. 939;
Moore v. Chicago, etc., Assn., 76 Ill. App. 433.

We refer again to the authorities cited in Division I — 2 (a) of this brief.

2. If we admit that the company did intend and did attempt to reduce the amount to be paid under the policy, and that the amendments are apt for the

purpose, then we say that the company had no power to make such a change because the agreement of the member to abide by the constitution "as it now is or may be constitutionally changed hereafter," does not enable the association to bind him by subsequent changes of the constitution reducing the amount stipulated to be paid under the policy.

In the recent case of Pokrefky v. Detroit &c. Assn. (Mich.), 80 N. W. R. 240, the Supreme Court of Michigan said: —

> "The by-laws as they existed at the time he became a member constituted a part of the contract. If the trustees had the power to limit the amount of payment to be made at $1,500, they could limit it to a much lesser amount. The act under which the company was organized permitted the trustees to change the by-laws at pleasure; but it cannot be said that this was intended to place it within the power of the trustees to adopt by-laws that would have a retrospective operation upon the contracts of the company made before new by-laws were adopted. While the trustees undoubtedly had the power to pass or change by-laws necessary for the well government of the affairs of the company, it cannot be said that it was intended to clothe them with the arbitrary power to reduce the amount due beneficiaries under contracts made before new by-laws were passed. The same question was presented in Insurance Co. *v.* Connor, 17 Pa. St. 136, and it was there held that the by-laws could have no retrospective effect."

In one of the cases cited by counsel for petitioner,

Lloyd v. Sup. Lodge Knights of Pythias, 98 Fed. Rep. 66, Judge Seaman said: —

> "No authority rests in the association under this reservation to repudiate obligations as insurer which have become vested under the contract, and the by-law which imposes a new condition or exempts from liability from a cause of death previously within the insurance cannot be made retroactive to impair or destroy liability for a pre-existing cause which arose under the contract."

In Hobbs v. Iowa Benefit Association, 82 Iowa, 107; 47 N. W. R. 983, the court said: —

> "The corporation has no capacity, as a legislative power from which it derived existence has no competency, by laws of its own enactment to disturb or divest rights which had created, or to impair the obligation of its contracts, or to change its responsibilities to its members, or to draw them into new and distinct relations."

The leading case in Missouri is that of Hysinger v. Supreme Lodge, etc., 42 M. A. 635; in which case the rule is laid down by the court, as contained in an extract from Niblack on Benefit Societies, as follows: —

> "But when the provision of the charter or a by-law of the society constitutes a part of the contract of insurance, its alteration without the consent of the member cannot affect the contract."

In support of this doctrine the court cites a num-

ber of authorities, including Morrison v. Wisconsin, etc., Co., 59 Wis. 162, a case exactly in point, which it is not necessary to more than refer to here.

In Grand Lodge v. Sater, 46 M. A. 452, the court has said: —

> "As to other amendments of the constitution and by-laws, Sater was bound, but not so as to changes directly affecting his contract of insurance. An insurance contract such as we have here is as sacred as any other contract, and it cannot be modified or changed by the society except by the express consent of the member."

There are a large number of cases directly supporting this doctrine. We refer to the following: —

Wist v. Grand Lodge, 22 Oregon, 271; 29 Pac. Rep. 610;

Hale v. Equitable Aid Union (Pa.), 31 Atl. Rep. 1066;

Weiler v. Equitable Aid Union, 36 N. Y. Supp. 734; 92 Hun, 277;

Margesson v. Massachusetts Benefit Assn., 165 Mass. 1132; 42 N. E. R. 1132;

Startling v. Sup. Council, 108 Mich. 140; 66 N. W. R. 340.

In the case of Voight v. Kersten, 164 Ill. 314; 45 N. E. R. 543, the Supreme Court of Illinois held that the right to designate a beneficiary which was unlimited at the time the certificate was issued, could not be taken away by a subsequent act of the

legislature. If the legislature could not take away the right to designate a beneficiary, much less can the directors of this company take away part of the amount promised its policy holders.

In the case of Startling v. Supreme Council, 108 Mich. 140, above cited, the court says: —

> "It is claimed by way of defense that in 1890, and before this suit was brought, the causes of total disability were reduced to three: (1) Entire and incurable loss of vision; (2) entire loss of both arms, or both legs; (3) hopeless and incurable insanity; and that, inasmuch as the plaintiff had agreed to observe the rules and regulations of the order, this change of causes of total disability would prevent his recovery for the total disability growing out of the paralysis. It has been held that where a mutual benefit society issued to a member a certificate of insurance, the subsequent adoption of a by-law by the society could not modify or change the contract of insurance without the express consent of the member. Grand Lodge *v.* Sater, 44 Mo. App. 445; Insurance Co. *v.* Conner, 17 Pa. St. 163; Becker *v.* Society, 144 Pa. St. 232; 22 Atl. 699; Morrison *v.* Insurance Co., 59 Wis. 162; 18 N. W. R. 13. To the same effect is Becker *v.* Insurance Company, 48 Mich. 610; 12 N. W. 874."

In the case of Hale v. Equitable Aid Union (Pa.), 31 Atl. 1066, above cited, the court says in a case much like the one at bar: —

> "The benefit certificate was accepted by plaintiff subject to the right of the corporation to amend its by-laws, and to change the contract in so far as the by-

laws make it, but not in so far as the contract is made by the certificate itself."

In an action on a similar certificate in New York, the Supreme Court of that State says (Weiler v. Equitable Aid Union, 36 N. Y. Supp. 734; 92 Hun, 277): —

"The main question relates to the effect to be given by the by-law passed in March, 1893. This was passed as a substitute for the by-law under which the policy to plaintiff was issued, and it operated to change the definite and absolute contract of defendant to pay in case the plaintiff was alive in good standing at the end of 11 years, into a contract to pay only in case plaintiff was totally disabled physically, and then only one-tenth thereof annually. It was essentially a new contract, and one upon which the plaintiff might never receive anything. The defendant claims that this change, though radical, is binding on the plaintiff, because in his application he agreed to accept the certificate, subject to such laws, rules and regulations as now exist or may hereafter be adopted by and governing said corporation. There is no finding that plaintiff assented to the change, other than as force may be given to the above clause of the application. A power reserved to make by-laws means a power to make reasonable by-laws. Kent *v.* Mining Co., 78 N. Y. 159, 183; Ang. & A. Corp. 347. This principle applies to associations like the defendant. Bac. on Ben. Soc. (2d ed.) 85. What are to be deemed reasonable depends on the objects and purposes of the society. In People *v.* Society, 24 Barb. 570, 575, it is said the by-laws must be reasonable, and adapted to the purpose of

the corporation. It must be consistent with its charter. Bac. on Ben. Soc. 83. Here the object and purpose of the corporation, as appears from the finding of fact, were, among other things, to do a life insurance business upon the assessment plan, and give certificates payable in manner and form as that given to plaintiff. The by-law in question strikes down these certificates, and to that extent changes the object and purposes of the corporation. The right of plaintiff to payment upon the contingency named in the certificate was in the nature of a vested right. Goodman *v.* Lodge, 67 Md. 117, 127; 9 Atl. 13, and 13 Atl. 627; Bac. on Ben. Soc. 289; 1 Moore Priv. Corp. 496. The plaintiff had the right to believe that the defendant would not, by by-laws, assume to change, as to him, the objects and purposes of the corporation upon the basis of which he had made his contract and for 10 years and upwards had performed upon his part. As to the plaintiff, the new by-law was simply repudiation of a positive contract. We are referred by appellant to the case of Hutchinson *v.* Supreme Tent, etc., 68 Hun, 355; 22 N. Y. Supp. 801. In that case the question of the reasonableness of the by-law was not considered and was not involved, as, without it, the plaintiff was held not to be entitled to recover at all. In the present case the court below held that the by-law in question, so far as the contract between the parties to this action is concerned, is an unreasonable by-law, as its effect is to infringe upon and impair the plaintiff's contract already given and rights already secured and as to this plaintiff and his contract with defendant is illegal and void."

In a recent case decided by the St. Louis Court

of Appeals, Smith v. Supreme Lodge Knights of Pythias, 83 Mo. App. 512–526, the court says:—

"The fact that it (the association) reserved the right, by the assent of the member, to make future laws obligatory upon him, could not justly be deemed to comprehend the right to abate its debt, for that would *pro tanto* destroy the contract between the parties and to permit one person to accept the consideration of a debt and subsequently to deny a material part or all of such debt, would authorize a patent fraud, which the law does not deem to have been within the intent of a mere general agreement for changes in the contract. Such an agreement only contemplates those changes which fairly consist with the full obligation entered into. It does not imply that the obligation itself should be lessened or destroyed at the will or caprice of the obligor, for that would involve injustice to one and ill design on the part of the other of two parties to a contract. The law does not seek to compass an injury; neither does it impute an intent to defraud in advance of proof. In associations like the present, which are professedly formed to provide a sum certain to a designated recipient, the parties are not to be understood as intending by an agreement on the part of the assured to obey future laws, that the indemnity specified shall be materially impaired or destroyed, after full consideration paid, under the operation of a subsequent by-law, which, like the one under review, provides for a forfeiture of material rights upon an event which the member, according to this record, could not avoid — death by self-destruction when insane. Of course, such a clause, if it had been inserted in the original contract, might have been available in some jurisdic-

tions, not to defendant, however, in contracts made in this State. Toomey *v.* Supreme Lodge K. of P., 147 Mo. 129; same case, 74 Mo. App. 507. That would present a very different question from the one before us. What we have to deal with is, not the enforceability of such a clause if embraced in the original agreement between the parties (as in the Toomey case, *supra*), but its injection into their contract per force of an agreement to abide by further by-laws. If it is thus read into the contract between the parties it necessarily affects its substance and the intent of the right to recover thereon, and is therefore a material alteration of an agreement fairly entered into and upon a full consideration. We cannot infer that this was the result had in view when the contract was made as shown in this record, nor do we think it would be a reasonable exercise for the right reserved to the order to make by-laws for the future governance of its members, to enact one which in effect took away about one-half of the sum it had agreed to pay him, after having received the consideration for the indemnity for 18 years."

Numerous cases are cited by counsel for petitioner to the effect that where a certificate is issued by a mutual benefit society, wherein the member agrees that such certificate is issued subject to laws then in force or thereafter adopted, he is bound by changes in the by-laws. These cases relate without exception to the amount of assessments to be paid by the member, or to his conduct, or to the amount of sick benefits. None of them hold that an essential element of a contract affecting substantially the rights of a member can be changed without his consent.

All the cases cited by counsel can be distinguished from the one at bar because the facts are different. There is no such agreement in this case because the language of the application is simply that the member will *abide* by the constitution, rules and regulations. The stipulation applies only to the conduct of the member, something to be done by him, as for example his residence, occupation or payment of assessments. Then again it must be read in connection with section 1, article 4, of the constitution which provides that *the policy shall constitute the basis of settlement*. Again in section 1 of article 7, it is provided that the Board of Directors *shall pay to the beneficiaries the amount set forth in the deceased member's policy of membership*. Again, in section 3, article 4, it is provided, that policies may be issued upon the basis of benefits ranging in amounts to $5,000, and all the money paid in assessments upon the policy. The policy, therefore, and not the by-laws, determines the amount to be recovered.

4. Counsel for petitioner devote considerable time to the argument that, because this is a mutual company, the policy holders and not the directors, really made the change. In the first place the modern life insurance companies, whether doing business on the assessment plan or the regular, or old line, fixed premium plan, are all mutual life insurance companies, but the court will take judicial notice of the fact that these companies are managed by directors who really govern the corporation, although it sometimes occurs that the management

take the precaution to obtain a proxy at the time the policy is issued which commits the member to whatever they do.

The company in question is a regular insurance corporation, managed by directors, but neither the directors, nor the policy holders, have any right to alter the contract of the company without the consent of the other party to it.

IV.

We have presented briefly, but we fear imperfectly, respondent's side of this case.

The court below was united upon all branches of the case except the construction of the suicide statute of Missouri. In spite of the learning and ability of Judge Sanborn, who wrote the dissenting opinion, and the respect to which his views are entitled, we respectfully insist that his habit of exact logical induction in this instance led him into error, and that the opinion of the majority of the court below is right, and that no valid reasons exist why this court should take jurisdiction of the case, or why this respondent should be further delayed in the collection of the amount which the petitioning company promised to pay, and for which it has received the full stipulated consideration.

Respectfully submitted,

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